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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CATHERINE LIN-HENDEL

Appeal 2009-004660
Application 09/833,956
Technology Center 3600

Before HUBERT C. LORIN, JOSEPH A. FISCHETTI, and BIBHU R.
MOHANTY, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING¹

Appellant has filed a Request for Rehearing (hereafter “Request”) under 37 C.F.R. § 41.52(a)(3) (2008) of the Decision of July 22, 2010 (hereafter “Decision”).

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

In the Decision, we affirmed the Examiner's rejection of claims 18-20 and 22-38. In so doing, we affirmed the rejection of independent claims 18 and 34 under 35 U.S.C. § 103(a) as being unpatentable over Gavarini (US 7,080,070 B1, issued Jul. 18, 2006) in view of Wells (US 6,711,586 B1, issued Mar. 23, 2004).

Appellant maintains the "Board has overlooked certain points relating to claims 28, 34, and 36." (Request 3).

Independent claim 18 recites in pertinent part, searching certain data sources of the plurality of data sources in a prioritized order specified by the user.

In our Decision, we stated that:

We also find in Wells, once the primary selection is presented to the user, the user then is presented with a plurality of different items (110a-110f), the selection of one of those items results in the display from a single search- the results of which are shown in Figure 2B (FF 6).

(Decision 5-6).

We based our analysis in the Decision on finding of fact 6 which states:

Wells discloses receiving by "...the Web server 15 if, for example, the user double clicks on one of associated selections 110a-f. FIG. 2b shows a second Web page 140 transmitted after the first primary information selection 105 has been updated to replace SCREAM with associated information selection 110f relating to the movie PSYCHO." (col. 7, 11. 38-43).

(Decision 4).

Appellant argues that "Claim 28, however, requires prioritizing

sources -- not items -- in the order specified by the user. In fact, the claim does not even include the words *item* or *items*, so *prioritizing* cannot reasonably be construed as applying to items.” (Request 4).

We do not find Appellant’s point compelling because the Specification does not explicitly define “sources²,” and “item” is a term which broadly covers “source.” In fact, Appellant’s reference to the Specification, on page 5 of the Request, for examples of “sources” fails to show even one instance where the word “source” is used. Rather, these instances only list examples of where Appellant maintains that a source is described. For example, within the referenced “list of suppliers”, the suppliers are no more than names on a given list, and thus are generally, items. Even still, our finding that items 110a-f are data sources is consistent with the definition of “source” because once the user selects an item, 110f for example, this will cause a new set of associated selections to be brought forth. (Wells, col. 7, ll. 50-56).

Independent claim 34 recites in pertinent part, simultaneously purchasing on-line all or some of said plurality of different items in said shopping list.

In our Decision, we found that: “the purchase of one of the movies offered by Wells in Figures 2a or 2b constitutes a purchase of some (FF 7) of the offered movies because the selection of even a single movie makes determinate an otherwise indeterminate choice over not buying the movie at all.” (Decision 7). We based our finding on the dictionary definition of the

² The ordinary and customary definition of the term “source” as defined by Merriam Webster’s Dictionary is: “that from which anything comes forth...” (<http://www.webster-dictionary.org/definition/source>, n. 3).

word “some” which we found to be “one indeterminate quantity, portion or number as distinguished from the rest.” (Decision 5, FF 7).

Appellant maintains that “the limitation *simultaneously* would be meaningless in [the (*sic*)] case of purchasing only a single item.” (Request 6). Appellant asserts that “the *simultaneously* limitation clearly mandates that at least two items are purchased” (Request 7).

We do not find this argument persuasive because Appellant chose to broaden the scope of the claim by using the alternative language “or some”. In so doing, Appellant allowed the claim to be met by the selection of one item as our (FF 7) supports. If Appellant sought to have “some” mean “at least two,” then this should have been recited in the claim. Appellant’s reliance of the word “simultaneously” to infer that more than one item is being selected, is at best, based one of plural interpretations of the claim language which are available- and we decline to accept Appellant’s. That is, Appellant seeks to have the term “simultaneously” refer to the plurality of items, when alternatively for example, “simultaneously” could refer to displaying information and purchasing simultaneously. During prosecution the PTO gives claims their “broadest reasonable interpretation consistent with the specification.” *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000).

Appellant seeks under the Request a new review of claim 36. In the Appeal Brief, Appellant stated “Applicant respectfully submits that claim 36 is separately patentable at least for the same reason as is discussed in relation to dependent claim 33 under the immediately preceding subheading.” (App. Br. 20). Our Decision at pages 7-8 addressed claim 33. Since Appellant made the outcome of claim 36 contingent on our reasoning for claim 33, and since Appellant does not argue any deficiency in our analysis of claim 33,

Appellant's argument to claim 36 falls with claim 33. Arguments which Appellant could have made with regard to claim 36 but chose not to make in the previously filed Briefs will not now be considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004).

For the reasons above, we are not convinced that Appellant has shown with particularity points believed to have been misapprehended or overlooked by the Board in rendering its earlier decision. Accordingly, Appellant's Request for Rehearing insofar as Appellant seeks an establishment of error in the Decision of the Board is denied.

CONCLUSIONS OF LAW

The arguments in Appellant's Request have not convinced us that we erred in affirming the Examiner's decision to reject claims 18-20, and 22-38 under 35 U.S.C. § 103(a) as being unpatentable over Gavarini in view of Wells.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

REHEARING DENIED

mls

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